IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17172 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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A.P.MOTORS LIMITED - Petitioner(s)
Versus
HARSHADBHAI HARISHBHAI KHATRI & 1 - Respondent(s)

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Appearance :
MR KM PATEL for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 1 - 2.
NOTICE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 14/06/2007

ORAL JUDGMENT

1. Heard learned Advocate Mr. KM Patel for the petitioner. Notice of rule issued by this court has been served on respondents as per the

official record of the registry of this court but no appearance has been filed on behalf of the respondents in these proceedings. The matter has been adjourned for fifteen times, even though, no appearance has been filed on behalf of the respondents and respondents have also not appeared in person though served. Therefore, this court is having no option except to decide the matter on merits in absence of respondents.

2. In the present petition, petitioner is challenging orders dated 19th July, 2006 and 24th April, 2006 page 10 and 12 respectively passed by the Industrial Tribunal.

3. Reference No. 1044 of 1996 is pending before the Industrial Tribunal wherein petitioner is respondent. Oral evidence of both the parties are over and arguments of the present respondent was heard by the Industrial Tribunal. Before that, on 24.4.2006, matter was for oral evidence of the petitioner. However, witness was not available, therefore, application for time was filed on 24.4.2006 by the petitioner before the industrial tribunal with a request to adjourn

the matter. This was objected by the respondent workman. Thereafter, the industrial tribunal has passed order. Industrial Tribunal had rejected application for time. Not only that, along with that, right of oral evidence of the petitioner was also closed. Thereafter, on 19th July, 2006 when the witness was available, request was made by the petitioner before the industrial tribunal that now witness is available, kindly reopen stage of oral evidence which was also objected by the present respondent on 19th July, 2006 and ultimately, the industrial tribunal after considering the application of the petitioner and the objection raised by the present respondent, rejected the request of the petitioner. Therefore, both the orders vide Exh. 61 dated 24th April, 2006 and Exh. 62 dated 19th July, 2006 are challenged through this petition.

4. Learned Advocate Mr. KM Patel for the petitioner submitted that the workman had given oral evidence vide Exh. 8 on 24th January, 2000. Thereafter, application was made vide Exh. 20 by the workman for further examination in chief

which was permitted by the industrial tribunal and the cross examination was over on 17.11.2005. Thereafter, matter was kept for oral evidence of the petitioner. He also submitted that the petitioner has produced copies of the documents on record of the case in its defence as well as the documents produced to show that the factory of the petitioner has been closed after working hours on 30.11.2003 and all the licences/registrations have also been cancelled. Therefore, in absence of oral evidence, petitioner is not able to prove the documentary evidence on important point that the petitioner has been closed on 30.11.2003 and, therefore, oral evidence on behalf of the petitioner is very much relevant and important for the petitioner to prove his defence which was not permitted by the industrial tribunal. He also submitted that under section 11 of the ID Act, 1947, industrial tribunal shall have the same powers as are vested with the civil court under the Code of Civil Procedure when trying a suit in respect of the examination of a witness on

oath and it is deemed to be the judicial proceedings within the meaning of section 193 and 228 of the Indian Penal Code. He also submitted that the industrial tribunal is having discretionary powers to reopen the stage of oral evidence in the interest of justice and may impose cost under section 11 sub section (7) of the ID Act, 1947. Industrial tribunal is deemed to be the civil court for the purpose of section 345, 346 and 348 of the Code of Criminal Procedure. Therefore, learned Advocate Mr. Patel submitted that if the opportunity would have been given to the petitioner when the witness was available, then, the matter would have come to an end early rather than rejecting the application of the petitioner. Learned Advocate Mr. Patel submitted that the reason assigned by the Industrial Tribunal is not genuine. According to his submission, objection raised by the present respondent has wrongly been considered and entertained by the tribunal. He also submitted that the discretionary powers must have to be exercised judiciously. There was

no delay on the part of the petitioner in examining the witness. On the contrary, in the reference of the year 1996, evidence was given by the workman on 24.1.2000 which was over on 17.11.2005, therefore, according to his submission, examination of the respondent started on 24.1.2000, his evidence remained continue to be completed upto 17.11.2005. So, five years period has been consumed by the present respondent for examining himself and no time at all has been given to the petitioner for examining witness. This aspect has lost sight of the industrial tribunal and, therefore, according to him, both the orders are required to be set aside.

5. On behalf of the respondents, no one is present. Respondent has not appeared before this court either through advocate or in person though served, therefore, this court is considering the submissions made by the learned Advocate Mr. Patel after perusing the aforesaid two orders which are under challenge in this petition.

6. I have considered the submissions made by the

learned Advocate Mr. Patel. I have also perused the orders below Exh. 61 and 62 and the reasoning given by the Industrial Tribunal while rejecting the application and closing the stage of oral evidence of the petitioner.

7. According to my opinion, the Industrial Tribunal has committed gross error in not appreciating the fact that once the workman has taken more than five years period for completing his oral evidence from 24th January, 2000 to 17th November, 2005, then, proper and reasonable opportunity should also be given to the petitioner for producing his oral evidence for proving the issues raised by him. Not only that, vide application Exh. 20, prayer was made by the workman for further examination in chief which was allowed by the tribunal and such further opportunity was given by the tribunal to workman, then, same opportunity, why not given by the tribunal to the petitioner? Only on one occasion, witness for the petitioner was not available for examination and at that time, application for adjournment was given by the

petitioner which was rejected by the tribunal but there was no stage of closure of the right of oral evidence of the petitioner. Not only that, respondent had also not suggested to close right of oral evidence of the petitioner on application dated 24.4.2006 Exh. 61. Only objection was raised for granting time by the present respondent but beyond that, without any opportunity to the petitioner, his right of oral evidence is also closed and, therefore, order dated 24.4.2006 is contrary to the principles of natural justice. Industrial Tribunal has committed gross error in passing order, closing stage of oral evidence of the petitioner when application for adjournment was given by the petitioner. At the most, tribunal can reject the application for adjournment. Question of closing right of oral evidence of the petitioner was not arising at that stage, therefore, that order is also bad. Similarly, when witness was available and was brought by the petitioner within the period of two months before the tribunal and application was made with a request to permit

oral evidence as witness is remaining present which was also rejected without application of mind which amounts to denial of reasonable opportunity as well as denial of justice to the petitioner. In absence of oral evidence, documentary evidence which was produced by the petitioner on record cannot be proved by the petitioner and, therefore, industrial tribunal ought to have granted opportunity to the petitioner for oral evidence when witness was personally present on the date of application Exh. 62. Question of delay does not arise in such circumstances. Industrial Tribunal ought to have considered the fact that within two months witness has been brought by the petitioner which would justify bona fide on the part of the petitioner to complete the proceedings as early as possible. Time consumed by the respondent workman in examining himself comes to about five years whereas within six months period, right of oral evidence of the petitioner has been closed by the industrial tribunal without opportunity to the petitioner and the

application to reopen right of oral evidence is also wrongly rejected by the tribunal. Such an approach on the part of the tribunal is arbitrary and amounts to denial of reasonable opportunity and justice to the petitioner. At the industrial tribunal can impose reasonable cost on the petitioner for not examining witness on 24.4.2006 but the industrial tribunal should have allowed application which was made on 19th July, 2006 by the petitioner. Reference is of the year 1996 and evidence of workman started in the year 2000 and completed in the year 2005, meaning thereby, after filing of the reference, about nine years period has been taken by the workman for completing his evidence and only within the period of six months, right of the petitioner for oral evidence has been closed by the industrial tribunal. Not only that, when the application was made to reopen it, it was also rejected by the tribunal which makes it clear that the view taken by the industrial tribunal is contrary to the principles of law, equity and justice. Such type of approach on the part of

the tribunal towards the employer is little harsh and arbitrary. For the tribunal, both the parties namely workman and the employer remain on same footing and it is not proper for the tribunal to give undue weightage to either of the parties before it but it has to deal with the matter while keeping in view the interest of justice without looking at the parties before it. Such an attitude on the part of the tribunal give wrong message and, therefore, according to my opinion, both the orders passed by the industrial tribunal are required to be quashed and set aside.

8. Accordingly, present petition is allowed. Orders passed by the industrial tribunal dated 24.4.2006 Exh. 61 and dated 19.7.2006 Exh. 62 in Reference NO. 1044 of 1996 are hereby set aside with a direction to the tribunal to reopen the stage of oral evidence of the petitioner and allow the petitioner to examine his witness and complete his evidence. This exercise is required to be completed by the tribunal within the period of three months from the date of receipt

of writ of this order. Rule is made absolute in terms indicated herein above.

(H.K. Rathod,J.)

Vyas